

Article II. Town Council

§ 2.01. Officers.

The members of the town council constitute the municipal officers of the Town of Kittery for all purposes required by statute, and, except as otherwise herein specifically provided, have all powers and authority given to, and perform all duties required of, municipal officers under the laws of this State. (Amended by vote of the people 11-7-17)

§ 2.02. Composition and eligibility.

(1) Composition. The town council is composed of 7 members, elected at large by the qualified voters of the town. (Amended by vote of the people 11-7-17)

(2) Eligibility. Only qualified voters who at all times during their term of office are and remain residents of the town are eligible to hold the office of councilor. (Amended by vote of the people 10-4-94; Amended by vote of the people 11-7-17)

§ 2.03. Election and terms.

The regular election of council members is to be held each year in the manner provided in Article X. (Amended by vote of the people 11-7-17)

Each member is elected for a term of 3 years and serves until a successor is elected and qualified. In case any candidates receive an equal number of votes, their relative positions are determined by lot. (Amended by vote of the people 10-4-94; Amended by vote of the people 11-7-17)

§ 2.03-A. Recall.

(1) Applicability. A member of the town council may be recalled and removed from office by the qualified voters of the Town as hereinafter provided. (Added by vote of the people 6-11-02)

(2) Petition by voters. On the written petition of a number of voters equal to at least 15% of the number of qualified voters registered at the time of the most recent municipal regular election, the town council shall, by order, provide for a special recall election as hereinafter provided. (Added by vote of the people 6-11-02)

(3) Petition procedure; procedure after filing. Petition procedures are those set forth in 30-A, MRS, § 2102, subsections 3 and 4, or any successor statute, except: (Amended by vote of the people 11-7-17)

(a) The wording required in 30-A, MRS, § 2102, subsection 3.B.(1) is as follows: (Amended by vote of the people 11-7-17)

“Town of Kittery”

“Each of the undersigned voters respectfully requests the town council to provide for a special election on the question of recalling and removal of (insert name and address) from the office of town councilor.” (Added by vote of the people 6-11-02)

(b) This required wording is to be followed by a statement of the reason(s) why recall and removal is sought. (Added by vote of the people 6-11-02)

(c) Any notice required to be furnished to the petitioners’ committee must also be given the councilor whose recall is sought, by the same means and in the same time frame. (Added by vote of the people 6-11-02)

(4) Calling of election. Within 20 days of receiving the clerk’s certificate of sufficiency, or of the town council’s determination of sufficiency, the council shall, by order, call for a special election on the recall

question, such election to be held not earlier than 45 days nor later than 60 days after the order. (Added by vote of the people 6-11-02)

(5) Form of ballot. The question submitted to the voters must be in substance as follows: (Amended by vote of the people 11-7-17)

“Do you favor recalling and removing (name and address) from the office of town councilor?”

YES NO

(Added by vote of the people 6-11-02)

(6) Count of ballot. For any councilor to be recalled and removed from office, both the following criteria must be satisfied:

(a) The majority of valid votes cast must favor recall and removal.

(b) The total number of valid votes cast must equal or exceed 40% of the number of voters registered at the time of the most recent municipal regular election. (Added by vote of the people 6-11-02)

(7) Limitation on recall. During the first 6 months of any term, no councilor is subject to a recall election, nor is a councilor subject to more than two recall elections in any term. (Added by vote of the people 6-11-02; Amended by vote of the people 11-7-17)

§ 2.04. Compensation; expenses.

Council members are each entitled to receive \$20.00 for each regular and/or special meeting attended, plus their actual and necessary expenses. Such compensation may be changed by ordinance, but no ordinance increasing such compensation may become effective until the date of commencement of the terms of the councilors elected at the next regular election, provided that such election follows the adoption of such ordinance by at least 6 months. (Ord. No. 1-74, 3-11-74; amended by vote of the people 10-4-94; amended by vote of the people 6-11-02; Amended by vote of the people 11-7-17)

§ 2.05. Chairperson.

(1) Election. At its first meeting or as soon thereafter as practicable, the council must elect, by majority vote of the entire seven-member council, one of its members to serve as chairperson for the ensuing year.

(2) Vacancy. The council is to fill any vacancy that may occur in the office of chairperson, from among its members, for the unexpired term by a majority vote of the council. In the temporary absence or disability of the chairperson, the council may elect from among its members, a chairperson pro tempore who exercises all the powers of the chairperson during such temporary absence or disability of the chairperson. (Amended by vote of the people 11-7-17)

(3) Duties. The chairperson presides at meetings of the council, is recognized as the head of the town government for all ceremonial purposes and is the Governor for purposes of military law, but has no administrative duties. The chairperson is entitled to vote on council matters and that vote is counted as a vote of the other members of the council. (Amended by vote of the people 10-4-94; Amended by vote of the people 11-7-17)

§ 2.06. General powers and duties.

All powers of the town are vested in the council, except as otherwise provided by law or this charter and the council must provide for the exercise thereof, and for the performance of all duties and obligations imposed on the town by law. (Amended by vote of the people 11-7-17)

§ 2.07. Enumeration of powers.

The council:

- (1) Has the power to appoint, suspend, and remove the town manager, but suspension or removal must be in accordance with Section 3.02 of this charter. The council has the power to appoint, and to remove for cause after notice and hearing, all members of boards created by statute, ordinance, this charter, or by council action, unless otherwise provided therein. (Amended by vote of the people 11-7-17)
- (2) Has the power to appoint all voting members of committees, regular and/or ad hoc, from among the qualified resident voters of the town and each appointee during term of office must remain a qualified resident voter in order to retain appointment. Applicants for the planning board and board of appeals must be interviewed by the council, with at least a quorum present, before any vote is taken by the council on the appointment. (Amended by vote of the people 11-7-17)
- (3) Has the power to enact, alter and repeal ordinances; adopt resolutions, codes and rules; and issue proclamations. (Amended by vote of the people 11-7-17)
- (4) Has the power to, by ordinance, create, change and abolish offices, departments and agencies, other than the offices, departments and agencies established by this charter. The council, by ordinance, may assign additional functions or duties to offices, departments or agencies established by this charter, but may not discontinue or assign to any other office, department or agency any function or duty assigned by this charter to a particular office, department or agency. (Amended by vote of the people 11-7-17)
- (5) Must provide for an independent annual audit of all town accounts and may provide for such additional audits as it deems necessary. Such audits are to be made by the State Department of Audit or by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the town government or any of its offices. (Amended by vote of the people 11-7-17)
- (6) Must provide for a review of the town charter at intervals not to exceed 10 years. (Amended by vote of the people 10-4-94; amended by vote of the people 6-11-02; amended by vote of the people 6-10-08; amended by vote of the people 11-3-09; Amended by vote of the people 11-7-17)

§ 2.08. Induction of council into office.

At the next regular meeting following the day of election, or as soon thereafter as practicable, all council members-elect are to be sworn to the faithful discharge of their duties by the town clerk or by any other person authorized to administer an oath. (Amended by vote of the people 10-4-94; Amended by vote of the people 11-7-17)

§ 2.09. Judge of qualifications.

The council is the judge of the election and qualifications of its members and of the grounds for forfeiture of their office as set forth in § 2.12, subsection 2, and for that purpose has the power to subpoena witnesses as provided in § 12.03, administer oaths and require the production of evidence. A council member charged with conduct constituting grounds for forfeiture of office is entitled to a public hearing on demand, and notice of such hearing must be published in one or more newspapers of general circulation in the town at least one week in advance of the hearing. Decisions made by the council under this section are subject to review by the Superior Court. (Amended by vote of the people 11-7-17)

§ 2.10. Procedure.

- (1) Meetings. The council must meet regularly at least once in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the chairperson or of 4 or more members and, when practicable, upon no less than 12 hours' notice, to each member. All meetings

must be public. However, the council may recess for the purpose of discussing in a closed or executive session, limited to its own membership and the manager or qualified officers and advisors concerned with the matter to be discussed, any matter which qualifies under State statute, provided that the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon is not taken by the council until the matter is placed on the agenda. (Amended by vote of the people 11-7-17)

(2) Rules and journal. The council shall, by resolution, adopt its own rules and order of business. The town clerk or deputy town clerk shall give notice of special council meetings to its members and to the public, and keep a journal of its proceedings. This journal is a public record. (Amended by vote of the people 11-7-17)

(3) Voting. Voting, except on procedural motions, is by roll call and the ayes and nays are to be recorded in the journal. Four members of the council constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. At least 12 hours' notice of the time and place of holding such adjourned meetings must be given to all members who were not present at the meeting from which adjournment was taken and to the public. No action of the council, except as otherwise provided in the 2nd sentence of this subsection and in § 2.12, subsection 3, is valid or binding unless adopted by the affirmative vote of 4 or more members of the council. (Amended by vote of the people 10-4-94; Amended by vote of the people 11-7-17)

§ 2.11. Prohibitions.

(1) Holding other office. Except where authorized by law, no councilor may hold any other office or employment with the school department or in a town department during the term for which the councilor was elected to the council, and no former councilor may hold any compensated appointive town or school office or employment until one year after the expiration of the term for which the councilor was elected. (Amended by vote of the people 11-7-17)

(2) Appointments and removals. The council may express its views and fully and freely discuss with the manager anything pertaining to appointment and removal of any town administrative officers or employees whom the manager or any subordinates are empowered to appoint, but neither the council nor any of its members may in any manner dictate the appointment or removal of any such officers and employees. (Amended by vote of the people 11-7-17)

(3) Interference with administration. The council or its members may deal with town officials and employees who are subject to the direction and supervision of the manager solely through the manager, and neither the council nor its members may give orders to any such official or employee, either publicly or privately. This subsection does not prevent the town council from appointing committees or commissions of its own members or of citizens to conduct investigations into the conduct of any official or department, or any matter relating to the welfare of the town. (Amended by vote of the people 10-4-94; Amended by vote of the people 11-7-17)

§ 2.12. Vacancies; forfeiture of office; filling of vacancies.

(1) Vacancies. A vacancy in a council office occurs by one or more of the following means: (Amended by vote of the people 11-7-17)

- (a) Nonacceptance;
- (b) Resignation;
- (c) Death;

- (d) Failure to qualify for the office within 10 days after written demand by the municipal officers;
- (e) Failure of the municipality to elect a person to office;
- (f) Forfeiture of office;
- (g) Recall and removal; or
- (h) Any other manner authorized by law or this charter.

(2) Forfeiture of office. A councilor forfeits office if the councilor: (Amended by vote of the people 11-7-17)

- (a) Lacks any qualification for the office prescribed by this charter or by law,
- (b) Violates any express prohibition of this charter,
- (c) Is convicted of a crime involving moral turpitude, or
- (d) Fails to attend 3 consecutive regular meetings of the council without being excused by the council.

(3) Filling of vacancies. If for any reason a vacancy exists in the membership of the town council more than 6 months prior to the next regular municipal election, the vacancy is to be filled by a special election for the unexpired portion of the term. In the event such vacancy occurs fewer than 6 months prior to the next regular municipal election, the vacancy may be filled for the unexpired portion of the term by a special election to be called by the municipal officers. Any such special elections must be conducted in accordance with the provisions of Article X. (Amended by vote of the people 10-4-94; amended by vote of the people 6-11-02; Amended by vote of the people 11-7-17)

§ 2.13. Action requiring an ordinance.

(1) In addition to other acts required by law or by specific provisions of this charter to be done by ordinance, those acts of the town council must be by ordinance which: (Amended by vote of the people 11-7-17)

- (a) Adopt or amend an administrative code or establish, alter or abolish any town department, office or agency;
- (b) Provide for a fine or establish a rule or regulation by which a fine is imposed;
- (c) Adopt with or without amendment ordinances proposed under the initiative power; and
- (d) Amend or repeal any ordinance previously adopted, except as otherwise provided in Article XI with respect to repeal of ordinances reconsidered under the referendum power.

(2) Acts other than those referred to in the preceding paragraph of this section may be done either by ordinance or by resolution. (Amended by vote of the people 6-11-02)

§ 2.14. Ordinances in general.

(1) Form. Every proposed ordinance must be introduced in writing and in the form required for final adoption. No ordinance may contain more than one subject which must be clearly expressed in its title. The enacting clause must be "The Town of Kittery hereby ordains...". Any ordinance which repeals or amends an existing ordinance or part of the town code must set out in full the ordinance, sections or subsections to be repealed or amended; indicate matter to be omitted by enclosing it in brackets or by strikeout type and indicate new matter by underscoring or by italics. (Amended by vote of the people 11-3-15)

(2) Procedure. An ordinance may be introduced by any member at any regular or special meeting of the council. The town clerk shall provide a copy to each council member and to the manager and shall make a reasonable number of copies available in the office of the town clerk, and shall, unless directed otherwise pursuant to State Statute, publish on the Town's web site, and post in a public place in the Municipal Offices, the U.S. Post Office(s) in Kittery and Kittery Point, the Community Center, and the Resource Recovery

Facility, a notice setting out the time and place for a public hearing thereon. The public hearing must follow the publication/posting by at least 7 days, may be held separately or in connection with a regular or special council meeting and may be adjourned from time to time. All persons interested will have an opportunity to be heard at the hearing. After the hearing, the council may adopt the ordinance with or without amendment or reject it. (Amended by vote of the people 11-3-15; Amended by vote of the people 11-7-17)

(3) Effective date. Except as otherwise provided in this charter, every adopted ordinance becomes effective at the expiration of 30 days after adoption or at any later date specified therein. (Amended by vote of the people 11-3-15)

§ 2.15. Emergency ordinances.

To meet a public emergency affecting life, health, property or the public peace, the council may adopt one or more emergency ordinances in the form and manner prescribed for ordinances generally, but such emergency ordinances may not levy taxes or authorize the borrowing of money except as provided in section 6.09, subsection 2. An emergency ordinance may be adopted with or without amendment or rejected, but the affirmative vote of at least 5 members is required for adoption. It becomes effective upon adoption or at such later time as it may specify. (Amended by vote of the people 11-7-17)

Every emergency ordinance, except one made pursuant to section 6.09, subsection 2, automatically stands repealed as of the 61st day following the date on which it was adopted, but this does not prevent reenactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances. (Amended by the vote of the people 11-5-13; Amended by vote of the people 11-7-17)

§ 2.16. Codes of technical regulations.

The council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance are as prescribed for ordinances generally, except that: (Amended by vote of the people 11-7-17)

(1) The requirements of § 2.14 for distribution and filing of copies of the ordinance is construed to include copies of the code of technical regulations as well as of the adopting ordinance, and (Amended by vote of the people 11-7-17)

(2) A copy of each adopted code of technical regulations as well as of the adopting ordinance must be authenticated and recorded by the town clerk pursuant to § 2.17, subsection 1. (Amended by vote of the people 11-7-17)

Copies of any adopted code of technical regulations must be made available by the town clerk for distribution or for purchase at a price fixed by the council. (Amended by vote of the people 11-7-17)

§ 2.17. Authentication and recording; codification; printing.

(1) Authentication and recording. The town clerk shall authenticate by signature and record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the council. (Amended by vote of the people 11-7-17)

(2) Codification. Within 3 years after adoption of this charter and at least every 10 years thereafter, the council must provide for the preparation of a general codification of all town ordinances and resolutions having the force and effect of law. The general codification must be adopted by the council by ordinance and be published promptly in bound or loose-leaf form, together with this charter and any amendments thereto, and such codes of technical regulations and other rules and regulations as the council may

specify. This compilation is known and cited officially as the Kittery Town Code. Copies of the code are to be furnished to town officers, placed in Rice Public Library and Town Hall for free public reference and made available for purchase by the public at a reasonable price fixed by the council. (Amended by vote of the people 11-7-17)

(3) Printing of ordinances and resolutions. The council shall cause each ordinance and resolution having the force and effect of law and each amendment to this charter to be printed promptly following its adoption, and the printed ordinances, resolutions and charter amendments are to be distributed or sold to the public at reasonable prices fixed by the council. Following publication of the first Kittery Town Code and at all times thereafter, the ordinances, resolutions and charter amendments are to be printed in substantially the same style as the code then currently in effect and in form suitable for integration therein. (Amended by vote of the people 11-7-17)